



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** McGuire Refrigeration, Inc.

**File:** B-242754

**Date:** May 31, 1991

M.L. McGuire for the protester.

James K. White, Esq., and Bruce H. Segal, Esq., Department of Commerce, for the agency.

Barbara C. Coles, Esq., Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Assertion that bidder was not required to sign and complete a certificate of procurement integrity because the solicitation included the certificate for informational purposes only is denied where the solicitation specifically states that each bidder is required to submit a signed certificate with its bid and that the failure to do so will result in rejection of the bid as nonresponsive.

2. Protester's argument that it was misled by a provision in an invitation for bids (IFB) stating that the Certificate of Procurement Integrity could be completed by successful "offerors" at any time prior to award to conclude that it was not required to provide a completed certificate with its bid is denied because (1) it ignores the language of Federal Acquisition Regulation § 52.203-8(c)(1), set forth in full in the IFB, which states that bidders are required to submit a signed certificate with their bid submissions; (2) it confuses the requirements applicable to sealed bidding with those applicable to negotiated procurements; and (3) in any event, it concerns a patent ambiguity in the solicitation which should have been challenged prior to bid opening.

3. Contention that by signing its bid protester effectively satisfied the requirement to complete and sign the Certificate of Procurement Integrity is denied because the certification provision imposes additional and substantial legal obligations on the contractor, and failure to sign and complete the certificate calls into question the bidder's commitment to the certificate's stated requirements.

## **DECISION**

McGuire Refrigeration, Inc. (MRI) protests the rejection of its bid as nonresponsive for failure to include a completed Certificate of Procurement Integrity as required by invitation for bids (IFB) No. 51-WCNA-1-06014RA, issued by the Department of Commerce for above-ground diesel fuel storage tanks. MRI argues that its failure to submit a completed certificate with its bid does not render its bid nonresponsive because the solicitation permitted bidders to certify any time prior to award and, alternatively, that MRI effectively satisfied the certification requirement at bid opening by signing its bid.

We deny the protest.

The IFB, issued November 2, 1990, contained the full text of the Certificate of Procurement Integrity clause found at Federal Acquisition Regulation (FAR) § 52.203-8, which includes instructions to bidders on how to execute a Certificate of Procurement Integrity as well as the text of the applicable certificate. The instructions set forth in FAR § 52.203-8 require bidders to complete the certificate, by identifying the individual certifier, providing the solicitation number and the name of the offeror, listing all violations or possible violations of the Office of Federal Procurement Policy (OFPP) Act provisions found at 41 U.S.C.A. § 423 (West Supp. 1990) (or entering "none" if none exists), and signing the certificate. The clause also advises that "[f]ailure of the bidder to submit the signed certificate with its bid shall render the bid nonresponsive." In addition, the solicitation cover sheet expressly warned potential bidders that "[fill-ins]" are provided in Section K, Representations Certifications And Other Statements of Offerors, and must be completed in full as applicable." [Emphasis in original.]

Eight bids were received by the bid opening date of December 4, with MRI the apparent low bidder. Upon review, MRI's bid was rejected as nonresponsive for failure to complete or sign the Certificate of Procurement Integrity. By letter dated January 22, MRI was notified that its bid had been rejected and that award had been made to the second low bidder, Joaquin Manufacturing Company. MRI's protest to our Office followed.

The Certificate of Procurement Integrity clause is required by FAR § 3.104-10 to be included in all solicitations where the resulting contract is expected to exceed \$100,000. The clause implements 41 U.S.C.A. § 423(e)(1), a statute that bars agencies from awarding contracts unless a bidder or offeror certifies in writing that neither it nor its employees have any information concerning violations or possible violations

of the OFPP Act provisions set forth elsewhere in 41 U.S.C. § 423. The activities prohibited by the OFPP Act involve soliciting or discussing post-government employment, offering or accepting a gratuity, and soliciting or disclosing proprietary or source selection information.

MRI contends that its bid was responsive because the certificate in the solicitation was intended for "reading and understanding and not for specific execution" by bidders and, therefore, the firm properly left the certificate blank. MRI also asserts that the solicitation, on its face, states that only successful bidders must complete the certificate, and that bidders may complete the certificate at any time prior to award. MRI bases this contention on section L.7, entitled "Procurement Integrity Provisions," which states that "if the resultant contract exceeds \$100,000, the apparent successful offeror shall be required to complete the certification required by FAR 3.104-9(b) prior to contract award." Finally, MRI argues that, in any event, its bid is responsive notwithstanding its failure to submit a completed certification because the signature on the front of its bid establishes MRI's intent to comply with all the solicitation's requirements, and is therefore tantamount to completing the certification.

MRI's argument that the certificate was informational only is both unpersuasive and at odds with the text of the certificate and the explicit instructions in the solicitation for completing the certificate. The text of the certificate advises bidders to enter existing violations or possible violations of the OFPP Act, or to enter the word "none" on the face of certificate to indicate that there are no existing violations. In addition, the provisions following the certificate specifically state that each bidder is required to submit a signed certificate with its bid submission and that the failure to do so will result in rejection of the bid as nonresponsive. FAR §§ 52.203-8(c)(1) and (c)(3). Given these explicit instructions, MRI cannot reasonably argue that the certificate was merely informational.

MRI also argues that despite the text of FAR § 52.203-8(c)(1), reprinted in full at section K.4 of the solicitation, section L.7 advised that the certificate could be completed by apparent successful "offerors" at any time prior to award. According to MRI, section L.7 led MRI to conclude that it need not provide a completed certificate with its bid.

MRI confuses the requirements applicable to a procurement using sealed bids with those applicable to negotiated procurements. The language of section L.7 reflects and refers to the FAR provisions explaining the procurement integrity requirements of the OFPP Act, which state that when agencies

use other than sealed bid procedures, signed and completed certificates must be submitted no later than contract award. FAR § 3.104-9(b)(3)(ii). These provisions do not apply to sealed bid procurements, which are covered by a companion FAR provision requiring that bids must be accompanied by signed and completed certificates when submitted. FAR § 3.104-9(b)(3)(i). In short, section L.7 was not applicable to the procurement because it applies to offerors--entities that respond to requests for proposals--not to bidders. Although the Commerce Department erroneously included section L.7 in an IFB, given the clear language of FAR § 52.203-8(c)(1), which, as stated above, is set forth in full in the solicitation, we do not believe that MRI was reasonably misled by section L.7. Even if MRI's view were a reasonable understanding of the solicitation, the question was at least ambiguous and had to be challenged prior to bid opening. See 4 C.F.R. § 21.2(a)(1) (1991); Wheeler Bros., Inc.; Defense Logistics Agency--Recon., B-214081.3, Apr. 4, 1985, 85-1 CPD ¶ 388.

Finally, MRI argues that even if the completed Certificate of Procurement Integrity was required at the time of bid opening, MRI effectively certified by signing its bid. We disagree. In a recent decision, Mid-East Contractors, Inc., B-242435, Mar. 29, 1991, 91-1 CPD ¶ \_\_\_, we found that a bid was properly rejected as nonresponsive for the bidder's failure to complete and sign the Certificate of Procurement Integrity, even though the bidder signed its bid and acknowledged the amendment that added the certification requirement to the solicitation. Since the certification provision, which implements several requirements of the OFPP Act, imposes additional and substantial legal obligations on the contractor,<sup>1/</sup> omission from a signed bid of a separately signed and completed Certificate of Procurement Integrity is a material deficiency in a bid because it calls into question the bidder's commitment to the certificate's stated requirements.

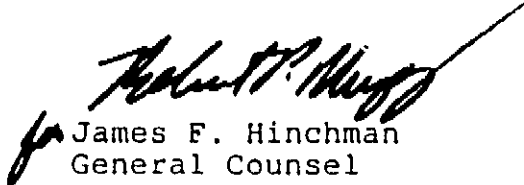
Given the legal obligations imposed under the certificate and the fact that the IFB specifically cautioned bidders, on the IFB cover sheet, to be sure that all required provisions in section K were completed in full, we cannot find that MRI unquestionably committed itself to the procurement integrity

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<sup>1/</sup> For example, it imposes on one individual representative of the bidder a direct obligation to become familiar with the OFPP Act's prohibitions against certain conduct.

requirements of the IFB merely by signing its bid.<sup>2/</sup> See, e.g., 52 Comp. Gen. 874 (1973). Since MRI did not provide any of the required information and failed to submit a signed, completed Certificate of Procurement Integrity, the agency properly rejected MRI's bid as nonresponsive. Mid-East Contractors, Inc., B-242435, supra.

The protest is denied.

  
for James F. Hinchman  
General Counsel

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<sup>2/</sup> Although the text of the certificate incorporated into the IFB does not provide a distinct signature line, the solicitation's reproduction of the certificate provided ample space for a signature immediately below the instruction to sign the certificate. Further, below the signature space, the certificate text also directs certifiers to type their name. Again the text provides ample space to comply with the instructions. These facts differ from those in our recent decision in Shifa Servs., Inc., B-242686, May 21, 1991, 91-1 CPD ¶ \_\_\_, where it was unclear where bidders were to sign in order to meet the Certificate of Procurement Integrity requirement because the solicitation provided neither a signature line nor adequate space to sign the certificate.